THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition No.10406 of 2002

(per the Hon'ble Sri Justice T.Ch.Surya Rao)

Dated 23-10-2006

Between:

Mr.Krishna Murthy .. Petitioner

and

Special Court constituted under A.P. Land Grabbing (P) Act situated at B.R.K.R. Building, Hyderabad and others .. Respondents

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition No.10406 of 2002

ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

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The writ petitioner seeks a writ of Certiorari to set aside the judgment and decree, dated 10-04-2002, in L.G.C.No.27 of 1994 passed by the learned Special Court under the A.P. Land Grabbing (Prohibition) Act (for brevity, 'the Act') Hyderabad.

The writ petitioner is the second respondent before the Special Court. Originally, the State, through its Mandal Revenue Officer, filed an application under Section 7-A of the Act in O.P.No.696 of 1988 on the file of the Special Tribunal-cum-the District Judge, Ranga Reddy District, against four respondents including the writ petitioner. By means of an order, dated 18-01-1994, passed by the learned Tribunal, the suit, O.P.No.696 of 1988, was transferred to the file of the Special Court and was renumbered as L.G.C.No.27 of 1994. At that stage, the writ petitioner, who was the second respondent, as well as the third respondent, remained ex parte. Only, respondents 1 and 4 resisted that application and eventually, after conducting enquiry, the learned Special Court dismissed the application as against the first respondent

and ordered eviction against the writ petitioner and the third respondent, since they remained ex parte. The writ petitioner carried the matter to this Court and having regard to the fact that he remained ex parte, this Court remitted the matter to the Special Court for fresh consideration insofar as respondents 2 and 3 are concerned. The second respondent, at that stage, filed his counter and resisted the application. After conducting enquiry, the learned Special Court allowed the application again insofar as the second respondent, writ petitioner, is concerned under the impugned judgment, which is now being assailed in the instant writ petition.

It was the case of the applicant that the land in dispute along with other land admeasuring Acs.13.38 guntas covered by Sy.No.135 stood classified as 'gairan sarkari' and situate at Kothapet village. The first respondent grabbed the land in an extent of Ac.0.02 guntas. The second respondent grabbed an extent of Ac.0.01 gunta. The third respondent grabbed an extent of Ac.0.0½ gunta and thus respondents 1 to 3 together grabbed Ac.0.04 guntas of the land, out of the total extent of Acs.13.38 guntas. The respondents 1 and 2 constructed pucca buildings and the third respondent constructed a compound wall in the land thus grabbed. The respondents 1 to 3 without any legal entitlement occupied the said lands and therefore they are liable to be evicted.

The case of the second respondent seems to be that the A.P. Commercial Taxes Employees Cooperative House Building Society Limited acquired an extent of Acs.10.30 guntas in Sy.Nos.136, 137, 139 to 142 of the Kothapet village, Uppal Mandal under a registered sale deeds, dated 15-01-1979, 20-02-1980 and 25-04-1980. The society obtained a lay out plan approved by the Grampanchayat, Kothapet and divided the land into various plots. The second

respondent was allotted plot No.1 in an extent of 335 square yards covered by Sy.Nos.136, 137 and 139 to 142. The society executed a registered sale deed in his favour on 22-07-1981 and since then he has been in exclusive possession and enjoyment of the property. The second respondent has also taken up a plea that he perfected his title by adverse possession having been in possession continuously and adverse to the Government for more than fifty years.

On the above pleadings, the learned Special Court framed the following issues at the time of settlement of issues.

1. Whether the petitioner is the owner of land bearing Sy.No.135 measuring Acs.13.38 guntas situate at Kothapet village, L.B.Nagar Municipality, Uppal Revenue Mandal, R.R.District?

2. Whether the respondents are land grabbers?

3. To what relief?

After remand, P.Ws.1 and 2, who were examined initially when the second respondent remained ex parte, were recalled and after examination in chief were cross-examined by the counsel of the writ petitioner. Exs.A4 to A14 were got marked on the side of the applicant. On behalf of the second respondent, he was examined as R.W.4, besides examining R.W.5, another witness, and getting Exs.B16 to B21 and Ex.X1 marked. Appreciating the evidence thus adduced, the learned Special Court was of the view that the second respondent, writ petitioner, was a land grabber and the applicant was absolute owner of the property covered by Sy.No.135; in consequence whereof, learned Court directed the second respondent to vacate from the land measuring 200 square yards of site and to deliver the same to the applicant. As aforesaid, that judgment and decree of the Special Court is now being assailed in the instant writ petition.

Sri A.Pulla Reddy, the learned counsel for the writ petitioner, represents that there is no legal evidence available on record to prove

the title of the applicant and the applicant failed to discharge the burden cast upon it and that the evidence available on record is not at all sufficient to hold that the land in dispute is covered by Sy.No.135. It is his further contention that there is any amount of discrepancy as regards the actual extent alleged to have been held by the writ petitioner and the application has not been suitably amended after the remand showing the actual extent. Finally, it is the contention of the learned counsel that the A.P. Commercial Taxes Employees Cooperative House Building Society Limited is a necessary and proper party and the society having not been impleaded as party, the application must fail.

The learned Government Pleader, however, tried to sustain the judgment.

As set out hereinabove, the matter has a chequered career. Originally, an application was filed under Section 7-A of the Act before the Special Tribunal-cum-the District Judge, Ranga Reddy District, way back in the year 1988. After a long lapse of time and after having realized that the matter should be tried by the Special Court having regard to its value by means of an order, dated 18-01-1994, the learned Special Tribunal transferred the case to the file of the Special Court when it was numbered as L.G.C.No.27 of 1994. It is not known whether the writ petitioner appeared before the Special Tribunal and contested the matter. However, he failed to appear before the Special Court after its transfer and was set ex parte. The case was initially proceeded against the contesting respondents 1 and 4 along with the respondents 2 and 3 who remained ex parte. Eventually, it ended in dismissal as against the first respondent and was allowed against the respondents 2 and 3, who remained ex parte. That ex parte order was set-aside by the order of this Court and matter was remitted, for

fresh consideration, to the Special Court. After remand, the second respondent, writ petitioner, appeared before the Special Court through his counsel, filed his counter and resisted the application. P.Ws.1 and 2, who were examined earlier when the second respondent remained ex parte, were recalled and were further examined-in-chief and were cross-examined by the counsel for the second respondent. The writ petitioner was examined as R.W.4, besides examining the President of A.P. Commercial Taxes Employees Cooperative House Building Society Limited as R.W.5. The oral and documentary evidence adduced on the side of the applicant shows that the land in question in fact is covered by Sy.No.135, but not Sy.Nos.136, 137, 139 to 142. Having regard to the plea taken by the respondent, a Commissioner was appointed in I.A.No.150 of 2001, who inspected the land in dispute and eventually filed his report. The report of the Commissioner, although has not been brought on record as evidence, it is obvious that it forms part of the record and can be considered. P.W.1, after remand, deposed on recall that the land in dispute was classified as 'gairan sarkari' in the revenue records and to buttress the same he filed the certified copies of pahanies for the years 1988-1989 to 1996-1997 in Exs.A4 to A12 and that they relate to Sy.No.135 of Kothapet village. He being an official witness, in ordinary course, is expected to speak only with reference to the record. Having regard to the nature of the dispute, no personal knowledge can be pleaded by any official witness and in fact P.W.1 did not do so. The cross-examination of this witness seems to have been directed initially in that direction. However, the witness stated that before giving evidence, he inspected the application schedule property. The witness denied emphatically the suggestion put to him that the land in dispute is covered by Sy.Nos.166, 167, 137,134 and 133 but not

Sy.No.135. Similarly, P.W.2 was recalled after the remand. P.W.2 is the Mandal Surveyor of Uppal Mandal. According to the evidence of this witness, the house belonging to the second respondent is found to have been situate in application schedule property covered by Sy.No.135 as per his survey and the entire extent of land covered by Sy.No.135 is the Government land. Of course, it is only the oral evidence of the witness and remained unsupported by any record of survey said to have been conducted by him. He squarely admitted in the cross-examination that at the time of his survey, tippons pertaining to Sy.No.135 were not available. The Court below proceeded under the assumption that the testimony of this witness remained unchallenged in the cross-examination, which obviously appears to be a mistake. For the reason that there is no supporting documentary evidence to buttress the oral testimony of this witness, it is of no avail to the State. However, a Commissioner was appointed as aforesaid in I.A.No.150 of 2001 who filed his report. It is obvious from the report, which forms part of the record, that the land in dispute is covered by Sy.No.135. Thus, Exs.A4 to A14, the pahanies, which show that the land covered by Sy.No.135 stands recorded as 'gairan sarkari' and the report of the Commissioner together constitute a *prima facie* case in favour of the applicant. The burden, therefore, shifts to the writ petitioner as can be seen from Section 10 of the Act.

The writ petitioner squarely pleaded that he purchased the property in dispute from the society by means of a registered sale deed. The sale deed in this case has been marked as Ex.B16, dated 22-07-1981. A perusal of the said document shows that the society in turn is said to have purchased the land from the owners/pattedars by means of registered sale deeds, dated 20-02-1980. The title deed pertaining to the society has not been filed in this

case. The lay out approved by the Grampanchayat, Kothapet, has also not been filed. Thus, the writ petitioner has not traced his title validly by filing the necessary documents to show that under a valid title the society acquired the land and in its turn after obtaining the permission from Grampanchayat, divided the properties into various plots before selling the same to its members. In a way the title of the vendor of the writ petitioner has not been proved by any cogent evidence before the Special Court. Having taken the plea that the writ petitioner purchased the property from the society, they failed to prove the title of his vendor. Merely because the writ petitioner pleaded *inter alia* in the counter filed by him that he purchased the property from a society, the applicant is not obliged to implead the society as a party to the proceedings. The comment in this regard made before us by the learned counsel for the writ petitioner that the society becomes a necessary and property party merits no consideration. The application could have been disposed of effectively even in the absence of the society, since it is still open to the writ petitioner to prove the title of his vendor. By no stretch of the imagination it can be said that the vendor of the writ petitioner is a necessary party to the proceedings. Even in the absence of the society, the valid title of the society can be proved before the Court by the writ petitioner, but that has not been done in the instant case.

From the competing claims of the parties the dispute seems centers round the point that whether the land in dispute is covered by Sy.No.135 as claimed by the applicant, or covered by the other Sy.Nos.136, 137, 139 to 142 of Kothapet Village. In the schedule appended to Ex.B16, sale deed, it has been mentioned clearly that land covered by it forms part of Sy.Nos.136, 137, 139 to 142 and obviously that becomes the subject matter of proof. No effort in that

regard has been made by the writ petitioner. However, I.A.No.150 of 2001 seems to have been filed by the applicant before the Special Court seeking the appointment of a Commissioner. Accordingly, the Assistant Director, Survey of land records, Ranga Reddy District, has been appointed as a Commissioner, who submitted his report. The learned Special Court was of the clear view that the report remained unassailed, since no objections whatsoever had been filed on the side of the applicant. We have given our anxious consideration to the record available and find no reason to differ with the said clear and cogent conclusion of the Special Court. From the above, it is clear that the land in dispute is covered by Sy.No.135. The plan appended to the report further elucidates the fact in issue. We see no reason as to why this report shall not be considered. This clearly brings home the fact that the land in dispute is covered by Sy.No.135. Even Ex.A2-sketch shows that the land in dispute is covered by Sy.No.135. It is apt here to consider the evidence of P.W.1, who categorically deposed that there has been no other occupants other than respondents 2 and 3 in the application schedule land. Pursuant to the orders of the Special Court, the third respondent was evicted and possession of the land in his occupation was delivered to the applicant, which can be seen from the evidence of P.W.1. That clears the doubt if any and from the record it is obvious that the land in dispute is covered by Sy.No.135 of Kothapet village. There has been total failure on the part of the writ petitioner to show that it is not covered by Sy.No.135, instead it is covered by the other survey numbers spoken to by him and pleaded clearly *inter alia* in his counter. The evidence of R.W.5, the President of the Society, carries us nowhere. Having taken pains in summoning R.W.5, the writ petitioner has not taken any steps to see that the relevant records from the society have been produced by him. The

oral evidence of R.W.5, without being supported by any documentary evidence, cannot, in that circumstance, be considered. Therefore, that evidence of R.W.5 shall have to be eschewed from consideration. In the result, there is no evidence, which can support the plea of the writ petitioner that the land in dispute is covered not by Sy.No.135, but by other survey numbers as pleaded by him. The writ petitioner, therefore, failed to discharge the burden placed upon him under Section 10. In that view of the matter and for the reasons discussed hereinabove, we see no compelling circumstances to differ with the conclusion arrived at by the learned Special Court.

The thrust of the contention of the learned counsel for the petitioner seems to be that as regards the extent of the land held by the writ petitioner the evidence is discrepant. It was pleaded specifically that the writ petitioner occupied one gunta of the land, whereas it came in evidence that it was 1½ guntas and at the end he was directed to be evicted from the land in an extent of 200 square yards and this discrepancy has not been properly explained by the applicant and even the pleading has not been properly amended in that direction. It is the contention of the learned counsel that no amount of evidence can be considered by the Court, in the absence of any proper plea.

To buttress the said contention, the learned counsel seeks to place reliance upon the judgments of the Apex Court in *Bhagat Singh v. Jaswant Singh*[1], *Central Bank of India v. H.P.Jalan*[2], *Abubakar Abdul Inamdar v. Harun Abdul Inamdar*[3] and *Bondar Singh v. Nihal Singh*[4]. The legal position seems to be well settled. Any amount of evidence in the absence of pleading or evidence, which is inconsistent with the plea taken by the respective parties, as a matter of that, cannot be considered and shall have to be jettisoned by the Court. The

question remains to be seen is whether there is necessary lack of plea in this case. The plea of the applicant seems to be that the land in dispute is covered by Sy.No.135. Although no specific boundaries have been given in the form-1, but it is mentioned *inter alia* therein that the boundaries could be seen as mentioned in the appended plan. The plan speaks for itself. It is trite that the boundaries will always prevail over the extent. Even if the extent as given in the application is not accurate, still the fact remains that the land in dispute is covered by Sy.No.135 and certainly it is not out of the Sy.No.135. In that view of the matter, whether it is an extent of 200 square yards or one gunta or 1½ gunta is of no criterion, since it is obviously covered by Sy.No.135. As discussed hereinabove, the land covered by Sy.No.135 is not merely an extent of one gunta, as a matter of that two guntas, but it is out of total extent of Acs.10.30 guntas. A bit of it is only said to have been grabbed by the writ petitioner. Therefore, the contention of the learned counsel for the petitioner on the alleged discrepancy of the extent of the land in question merits no consideration.

The learned counsel at the end represents that in the event that this Court comes to the conclusion that the applicant is a land grabber on equitable considerations, let there be a direction to the State to consider his request for regularization of the land. Although an attempt has been made by taking a plea *inter alia* in the counter that he perfected his title by means of adverse possession, no endeavour has been made in that direction to prove that plea. The learned Special Court has rightly repelled the plea of adverse possession, since it is not supported by any piece of evidence. No overt act has been pleaded to show the date from which the possession of the applicant becomes adverse to the State. The possession, for however length it might be, unaccompanied by the adverse animus, cannot be

considered for the purposes of prescriptive title. It is a total failure on the part of the applicant to bring home the plea of adverse possession. The fact remains that having pleaded that he purchased the property from a society, the applicant failed to prove the title of his vendor and having pleaded prescriptive title, there has been no attempt even in that direction to prove the same. It is obvious that it is an occupation of the land without there being any legal entitlement thereto coming squarely thereby within the ambit of the expression 'grabbing' as enjoined under Section 2 (e) of the Act. Inasmuch as a pucca structure has been constructed in the land in dispute, it is still open to him to approach the State by filing a necessary representation requesting for regularization on payment of market value of the property; in which event, it is for the State to consider by passing appropriate orders. But, there cannot be any positive direction to the State to regularize the encroachment.

For the above reasons, the writ petition fails and is dismissed. But, under the circumstances, no separate order as to costs.

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T.CH.SURYA RAO, J.

G.CHANDRAIAH, J.

23rd October, 2006.

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[1] AIR 1966 SC 1861

[2] AIR 1972 SC 1274

[3] AIR 1996 SC 112

[4] (2003) 4 SCC 161